In the Supreme Court of the United States

OCTOBER TERM, 1924

YEE HEM, PLAINTIFF IN ERROR,
v.
THE UNITED STATES
No. 303

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

STATEMENT

This case is before the court on writ of error perfected under Section 238 of the Judicial Code upon the ground that a Constitutional question is involved. Here is the case: Plaintiff in error was convicted under an indictment charging him with concealing imported smoking opium in violation of the Act of February 9, 1909, c. 100 (35 Stat. 614), as amended by the Act of January 17, 1914, c. 9 (38 Stat. 275), and act May 26, 1922, 42 Stat. 596. At the trial the court charged the jury on the question of burden of proof in accordance with Sections 2 and 3 of the amendatory Act of January 17, 1914, *supra,* the material parts of which sections read as follows:

> SEC. 2. That if any person shall fraudulently or knowingly import or bring into

the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or by imprisonment for any time not exceeding two years, or both. Whenever, on trial for violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.

SEC. 3. That on and after July first, nineteen hundred and thirteen, all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the first day of April, nineteen hundred and nine, and the burden of proof shall be on the claimant or the accused to rebut such presumption.

ARGUMENT

The statutory presumptions here involved are valid

The precise point here involved was decided favorably to the Government in *Gee Woe* v.

United States, 250 Fed. 428, 429, and certiorari refused by this court (248 U. S. 562). In that case the Circuit Court of Appeals for the Fifth Circuit said:

> That presumptions of this and like kind, rebuttable and explainable by the accused persons, are within the competency of Congress to create is well settled. *Luria* v. *U. S.,* 231 U. S. 9–25, 34 Sup. Ct. 10, 58 L. Ed. 101; *United States* v. *Yee Fing* (D. C.), 222 Fed. 154.

In *Luria* v. *United States,* 231 U. S. 9, 25, 26, this court said:

> The controlling rule respecting the power of the legislature in establishing such presumptions is comprehensively stated in *Mobile, etc., Railroad Co.* v. *Turnipseed,* 219 U. S. 35, 42, 43, as follows:
>
> "Legislation providing that proof of one fact shall constitute *prima facie* evidence of the main fact in issue is but to enact a rule of evidence, and quite within the general power of government. Statutes, national and state, dealing with such methods of proof in both civil and criminal cases abound, and the decisions upholding them are numerous. . . . . .
>
> "That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved

and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed.

"If a legislative provision not unreasonable in itself prescribing a rule of evidence, in either criminal or civil cases, does not shut out from the party affected a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue, there is no ground for holding that due process of law has been denied him."

Of like import are *Fong Yue Ting* v. *United States,* 149 U. S. 698, 729; *Adams* v. *New York,* 192 U. S. 585, 599; *Bailey* v. *Alabama,* 219 U. S. 219, 238; *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U. S. 61, 81; *Reitler* v. *Harris,* 223 U. S. 437, 441.

Moreover, the statutory presumptions here drawn in issue were distinctly upheld in the following cases:

Ng Choy Fong v. *United States,* 245 Fed. 305; certiorari denied, 245 U. S. 669.

Gladstone v. *United States,* 248 Fed. 117; certiorari denied, 247 U. S. 521.

Charley Toy et al. v. *United States,* 266 Fed. 326; certiorari denied, 254 U. S. 639

These particular statutory presumptions have been upon the statute books, one since 1909 and the

other since 1914. During this period their validity has been frequently challenged, but without success. Certainly had there been serious question regarding their validity it seems reasonable to suppose this court would have issued a writ of certiorari in some one or all of the several cases in which petitions for the writ were presented to this court attacking these presumptions.

II

It is respectfully submitted that the judgments below should be affirmed.

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MARCH, 1925.

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